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ALTA DEVICES, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ALTA DEVICES, INC.,

Plaintiff,

v.

LG ELECTRONICS, INC.,

Defendant.

) Case No. 5:18-cv-00404-LHK (VKD)

) **PLAINTIFF ALTA DEVICES, INC.'S**
) **OPPOSITION TO MOTION BY**
) **DEFENDANT LG ELECTRONICS, INC. TO**
) **COMPEL FURTHER IDENTIFICATION**
) **OF TRADE SECRETS PURSUANT TO CAL.**
) **CODE CIV. P. § 2019.210**

) _____
) Date: December 4, 2018

) Time: 10:00 a.m.

) Courtroom: Courtroom 2, 5th Floor

) The Honorable Virginia K. DeMarchi

) Complaint Filed: January 19, 2018

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ALTA'S OPPOSITION TO LGE'S MOTION TO COMPEL FURTHER IDENTIFICATION
OF TRADE SECRETS PURSUANT TO CAL. CCP §2019.210
CASE NO. 5:18-cv-00404-LHK (VKD)

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Alta Devices, Inc., (“Alta”) responds herein to Defendant LG Electronics, Inc.’s, (“LGE”) Motion to Compel Alta to Identify Its Trade Secrets with Reasonable Particularity (D.N. 58) (“Motion”).

I. INTRODUCTION

Alta is the first company to create a commercially-viable manufacturing process for thin film gallium arsenide (“GaAs”) solar devices. LGE sought to learn more about Alta’s disruptive and trade secret technology under the guise of being a potential investor conducting “due diligence.” Before disclosing trade secrets to LGE, Alta and LGE entered into an NDA in which both parties described the categories of confidential information Alta was to provide to LGE. Thereafter, Alta provided confidential information to LGE at LGE’s request, as well as in responses to LGE’s questions about various aspects of Alta’s technology. Alta only learned later that, prior to embarking on its purported “due diligence,” LGE had already developed a plan – in LGE’s own words – “for LG in-house development of Alta Device technology.”

LGE has repeatedly feigned ignorance in this action as to the trade secrets Alta accuses LGE of misappropriating, first on LGE’s Motion to Dismiss Alta’s Complaint and now in LGE’s Motion. The trade secrets Alta accuses LGE of misappropriating are no mystery because they are contained in the information exchanged pursuant to the NDA. As the Court previously stated in its Order on LGE’s Motion to Dismiss: “LGE can hardly claim it is unable to determine what trade secrets Alta gave LGE in 2011 and 2012.” (D.N.55 at 14:26-15:2.)

After LGE’s Motion to Dismiss, Alta provided a further and more detailed Identification of Trade Secrets Pursuant to Section 2019.210 (“Identification”). Alta’s Identification explains the trade secrets claimed by Alta, both by the categories used by LGE in its own documents to describe them, as well as by providing further details. The Court previously found the categories used by Alta to be sufficiently particular to “give both the Court and LGE notice of the boundaries within which [Alta’s] trade secrets lie.” (*See* D.N.55 at 13:21-15:2 and 16:2-5.) Moreover, in its Identification, Alta went into much greater detail further by breaking down the

1 trade secrets contained within categories and providing explication as to the importance of each
2 of Alta's trade secrets within its manufacturing process that are claimed in this action.

3 LGE's Motion ignores both the fact that Alta gave these trade secrets to LGE at LGE's
4 request, as well as the totality of Alta's explanation of the flow of its manufacturing process.
5 Instead, LGE parses Alta's Identification, treating each word and phrase as if it must convey a
6 particularized trade secret that must be provided in list format.

7 Alta's Identification is sufficient to: (1) notify LGE of the trade secrets at issue so that
8 LGE can defend itself; and (2) inform the Court so that it may craft discovery. No more is
9 required by California Code of Civil Procedure section 2019.210 ("Section 2019.210") when
10 these two goals are served. LGE's detailed arguments, as well as LGE's expert's lengthy
11 declaration as to why Alta's trade secrets are already generally known, demonstrate that LGE is
12 able to defend against Alta's claims. Moreover, where, as here, credible experts disagree on
13 whether they can understand and distinguish the trade secrets set forth, the Identification should
14 be considered sufficient so that trade secrets discovery may commence.

15 Alta's extensive Identification more than adequately serves the purposes of Section
16 2019.210. In considering the adequacy of a trade secret identification, "the designation should
17 be liberally construed, and reasonable doubts about its sufficiency resolved in favor of allowing
18 discovery to go forward." *Brescia*, 172 Cal. App. 4th at 149; *Prolifiq*, 2014 U.S. Dist. LEXIS
19 77493, at *7. For all of these reasons as set forth more fully below, LGE's Motion should be
20 denied.

21 **II. STATEMENT OF FACTS**

22 Alta was founded in Silicon Valley in 2008 and is the world's leader in the
23 development of thin-film solar technology using GaAs for wide-spread, commercially viable
24 use. (*See* Complaint (D.N. 1), ¶¶ 7-10.) Alta holds the world record for photovoltaic solar
25 energy conversion and, as of 2011, Alta had developed the world's only known manufacturing
26 processes for GaAs solar film that had advanced to a demonstrative production line and was
27 preparing to scale up to a large, commercially viable manufacturing facility. (*Id.*, ¶¶ 10-11.)
28

1 LGE is a Korean entity and one of the world's largest electronics manufacturers. (*Id.*, ¶
2 38.) In 2011, LGE heard about Alta's innovative technology and expressed interest to Alta in
3 learning more details about it. (*Id.*, ¶¶ 38-40.) In late 2011 and early 2012, knowing that Alta
4 was seeking financing for its large-scale manufacturing plans, LGE claimed interest in making
5 an investment conditioned on completing due diligence into Alta's manufacturing processes.
6 (*Id.*, ¶¶ 11-13.) Alta and LGE entered into an NDA in June 2011 (the "NDA"), and LGE sent
7 its technologists to meet with Alta's key employees and to view Alta's facilities and prototype
8 manufacturing apparatus. (*Id.*, ¶¶ 41 and 50.) Under the auspices of the parties' NDA, LGE
9 also obtained from Alta other trade secret know-how and other confidential or proprietary
10 information through a series of written questions and answers ("Q&A") and other requests for
11 information, including descriptions of feasibility, tests, costs, manufacturing processes and
12 tools, techniques, bills of material, and tool utilization road maps (collectively "Confidential
13 Information"). LGE thereby gained the benefits of years of Alta's research and development,
14 all with an undisclosed intent to develop LGE's own manufacturing facilities using
15 Confidential Information LGE had misappropriated from Alta. (*Id.*, ¶¶ 14-16, 19, 50, 52, and
16 55.) After extracting Confidential Information from Alta, LGE then declined to make binding
17 its previous tentative investment offer. (*Id.*, ¶ 57.)

18 In late 2013 and early 2014, LGE sought thin-film samples from Alta by posing as a
19 potential customer, hiding its true intention to use the samples for reverse engineering to assist
20 in the development of its own manufacturing process. (*Id.*, ¶ 64.) LGE thereafter developed its
21 manufacturing capabilities using Alta's Confidential Information, and is now producing very
22 similar thin GaAs solar film while moving toward full-scale, mass-commercialized economical
23 production. (*Id.*, ¶ 17.) LGE is presently marketing its GaAs thin-film that is manufactured
24 using Alta's Confidential Information. (*Id.*, ¶ 18.)

25 In 2016 and 2017, Alta began learning of LGE's misappropriation. (*Id.*, ¶ 65.)
26 Publications by LGE described solar cell structures manufactured using similar manufacturing
27 techniques as Alta, and an LGE patent application appears to incorporate strikingly similar
28

aspects of Alta's production process and tooling. (*Id.*, ¶¶ 66-72.) Alta sought reassurances from LGE and also demanded that LGE return Alta's Confidential Information pursuant to the NDA. (*Id.*, ¶¶ 75 and 83.)

The materials returned to Alta by LGE included LGE-created documents discussing Alta's technology and revealing that, prior to claiming to be interested in making an offer to invest in Alta, LGE had developed a plan, in LGE's own words, "for LG in-house development of Alta Device technology". (*Id.*, ¶¶ 59-63 and 77.) LGE also revealed that it had "unintentionally discarded" two of the five solar cells it had received from Alta as samples, despite previously confirming that they were in LGE's possession. (*Id.*, ¶ 87.) With its vast capital and manufacturing resources, LGE's plan to develop Alta's technology and become a competitor threatens to drive Alta out of business before Alta can reach the stage of economical mass commercialization. (*Id.*, ¶¶ 20 and 91.) Alta's very existence is threatened by LGE's theft of Alta's Confidential Information that LGE obtained under the NDA. (*Id.*, ¶ 21.)

III. PROCEDURAL BACKGROUND TO LGE'S SECTION 2019.210 MOTION

In connection with the June 27, 2018, initial Case Management Conference, LGE requested that discovery should not commence, in part, because Alta had not yet identified its trade secrets pursuant to Section 2019.210. (D.N. 29 at 11:4-7.) The Court denied LGE's request to stay discovery and ordered Alta to serve its Identification by July 16, 2018. (D.N. 31 at 1:22 and 2:1.)

Alta timely served its Identification on July 16, 2018, at around 4:00 p.m. (Declaration of Dagogo-Jack, Exh. C.) The following morning, July 17, 2018, LGE's counsel wrote to Alta's counsel asserting that Alta's Identification was inadequate. (*Ibid.*) Over the next few weeks, the parties exchanged their views and authorities regarding the sufficiency of Alta's Identification, but were unable to resolve their differences. (*See id.*, Exhs. A-D and F-G.)

LGE takes the position that Alta may not obtain any discovery pertaining to trade secrets from LGE until Alta's Identification is sufficient, yet LGE did not act to bring this dispute to the Court for a determination. Instead, LGE insisted that Alta amend its Identification and seek

1 leave of Court in order to do so. (*See id.* Exh. D.) To expedite the resolution of the dispute, Alta
2 instead stated on August 9, 2018, that it intended to make a motion for a determination that its
3 Identification was sufficient, and invoked the “meet and confer” provisions of the Court’s
4 Standing Order required before seeking relief from the Court. (D.N. 45 at 5.)

5 At their conference on August 15, 2018, Alta took the position that this is a discovery
6 motion. LGE took the position that the motion was LGE’s to make and that it was not within the
7 purview of the Magistrate Judge in this case. The parties agreed to seek guidance from the Court
8 regarding the proper procedure for resolving the dispute. (*Ibid.*)

9 In their joint discovery dispute letter of August 22, 2018, both Alta and LGE requested
10 leave to file a noticed motion concerning the dispute. (*Id.* at 1.) Only the day after the joint letter
11 had been submitted to the Court did LGE disclose the identity of its proposed expert, Dr.
12 Michael Lebby (“Lebby”), whose opinion LGE purportedly needed in order to file the instant
13 Motion. (D.N. 50 Exh. A.) Alta objected to the disclosure of its highly confidential information
14 to Lebby, in part, because he had obtained patents covering thin film solar cells for a company
15 whose patent portfolio had been acquired by a major solar cell manufacturer with whom Lebby
16 had a research relationship, and because Lebby holds himself out as a technologist for consulting
17 and could perform work for a competitor of Alta. LGE’s disclosure of Lebby’s work was also
18 incomplete. The dispute was submitted to the Court by joint letter of September 13, 2018. (D.N.
19 50.) On October 16, 2018, the Magistrate Judge found that LGE could designate Lebby as an
20 expert under the Stipulated Protective Order, but only if he first provided additional assurances
21 about his ongoing work and agreed to forego any work in the field of thin film solar cell
22 manufacturing for the same duration as the patent prosecution bar he is subject to under the
23 Stipulated Protective Order (D.N. 41) entered herein. (D.N. 54) Lebby’s declaration was filed on
24 October 18, 2018. (D.N. 56)

1 LGE filed the instant Motion on October 25, 2018, only seven days after Lebby had
 2 received clearance to review Alta's highly confidential information, including Alta's
 3 Identification.¹

4 LGE's strategy throughout this litigation has been to delay Alta's trade secrets discovery.
 5 As the procedural background to this Motion demonstrates, LGE's counsel claimed inability to
 6 understand Alta's Identification within hours of receiving it and prior to showing it to Lebby,
 7 even though LGE's own technical team had already reviewed Alta's trade secrets. LGE then
 8 took no step toward bringing this Motion to the Court for a determination. Instead, Alta had to
 9 take the initiative in getting this matter before the Court. Only when it was clear that Alta might
 10 file a motion first did LGE claim interest in filing this Motion. In seeking leave from the Court
 11 to file this Motion, however, LGE failed to reveal to either Alta or the Court that LGE had an as-
 12 yet undisclosed expert whose opinion LGE purportedly needed to file its Motion, and who had
 13 not yet seen Alta's Identification. LGE's disclosure of Lebby's work in the field was incomplete
 14 and objectionable to Alta. After Alta brought its objections to LGE's expert to the Court for
 15

16
 17 ¹ LGE's Motion is based upon Alta's original Identification of July 16, 2018. Alta
 18 amended its Identification to make corrections and clarifications. (Declaration of John D.
 19 O'Connor filed and served herewith ("O'Connor Decl.") at ¶¶2-4.) LGE incorrectly asserts that
 20 Alta is required to obtain leave prior to amending its Identification. (*See* Mot. at 4:21-28 n.1.)
 21 Neither Section 2019.210 nor any order of the Court required Alta to obtain leave prior to
 22 amendment. In all of the cases cited by LGE in which leave was required, the Court had entered
 23 an order to that effect as a part of its case management. *See, e.g., Neothermia Corp. v. Rubicor*
Med., Inc., 345 F. Supp.2d 1042, 1044-45 (N.D. Cal. 2004). No discovery took place prior to
 24 Alta's amendment. (O'Connor Decl., ¶5.) Accordingly, Alta could not have improperly used
 25 any discovery from LGE to amend its Identification in contravention of the policy underlying the
 26 statute. *See ibid.*

27 Alta notes that trade secret (34) in the Identification that is the subject of LGE's Motion
 28 incorrectly refers [REDACTED]. (O'Connor Decl., ¶3.) Alta
 corrected this error in its Second Amended Identification of Trade Secrets Pursuant to Cal.
 C.C.P. section 2019.210 ("Second Identification"). (O'Connor Decl., ¶4.) Alta will want to
 ensure that trade secret (34) is correctly stated in the operative Identification that the Court and
 the parties will rely upon to govern this action. (*Ibid.*)

1 resolution, the Court required Lebby to provide further assurances that he did not have ongoing
 2 work in the field or with a competitor and would not work in the field until at least two years
 3 after the termination of this action. LGE's delay in revealing its need for an expert and
 4 objectionable disclosure thus had the effect of further delaying Alta's trade secrets discovery.

5 **IV. LEGAL STANDARD**

6 California's discovery code requires that a party alleging trade secret misappropriation
 7 "identify the trade secret with reasonable particularity" before obtaining discovery into another
 8 party's trade secrets. *See* Cal. Civ. Proc. Code § 2019.210. The purpose of Section 2019.210 is
 9 to "give both the court and the defendant reasonable notice of the issues which must be met at
 10 the time of trial and to provide reasonable guidance in ascertaining the scope of appropriate
 11 discovery." *Brescia v. Angelin*, 172 Cal. App. 4th 133, 144 (2009) (quoting *Diodes, Inc. v.*
 12 *Franzen*, 260 Cal. App. 2d 244, 253 (1968) ("*Diodes*")).²

13 The "particularity" required by Section 2019.210 is not statutorily defined, but instead is
 14 purposely vague to permit "play in the joints." *Advanced Modular Sputtering, Inc. v. Superior*
 15 *Ct.*, 132 Cal. App. 4th 826, 835 (2005). The party alleging misappropriation is not required to
 16 "define every minute detail of its claimed trade secret at the outset of the litigation," but "must
 17 make some showing that is reasonable, i.e., fair, proper, just and rational[,] under all of the
 18 circumstances." *Id.* at 835-36 (reasonable doubt as to the adequacy of the description is to be
 19 resolved in favor of allowing discovery to proceed). Only reasonable particularity is required,
 20 not the greatest particularity possible. *Phoenix Techs., Ltd. v. DeviceVM, Inc.*, No. 09-4697-EDL,
 21 2010 U.S. Dist. LEXIS 24884, at *6-7 (N.D. Cal. Mar. 17, 2010) (quoting *Advanced Modular*,
 22 132 Cal.App.4th at 835-36).³

24 ² No case requires Section 2019.210 to be applied in federal courts in this District. However,
 25 courts within this District find it appropriate to require identification of trade secrets as a case
 26 management tool prior to trade secrets discovery. *See, e.g., Loop AI Labs, Inc. v. Gatti*, No. 15-
 cv-00798-HSG (DMR), 2015 U.S. Dist. LEXIS 170349, at *5-8 (N.D. Cal. Dec. 21, 2015).

27 ³ Alta notes that LGE repeatedly cites throughout its brief to the Ninth Circuit *Imax* case as
 28 authority on the particularity required under Section 2019.210. Neither the *Imax* nor the *Agency*

1 The trade secrets themselves need not be set forth, only information sufficient to permit
 2 the defendant to ascertain *the boundaries within which the secret lies*. *Prolifiq Software Inc. v.*
 3 *Veeva Systems Inc.*, No. C 13-03644 SI, 2014 U.S. Dist. LEXIS 77493, at *6 (N.D. Cal., June 4,
 4 2014). Where the subject matter of the trade secrets is a manufacturing process, the plaintiff
 5 need only identify the end product manufactured and supply sufficient data concerning the
 6 process *without revealing the technical details of the process or the secrets themselves*. *Pixion,*
 7 *Inc. v. PlaceWare, Inc.*, 421 F. Supp. 2d 1233, 1241-42 and n.4 (N.D. Cal. 2005), *affirmed* 177
 8 Fed. Appx. 85 (Fed. Cir. 2006) (quoting *Diodes*, 260 Cal. App. 2d 244, 253).⁴ It is sufficient if
 9 the trade secret claimant distinguishes its trade secret from the other components of a process in
 10 which the trade secret is used. *See Lilith Games (Shanghai) Co. v. uCool, Inc.*, No. 15-CV-
 11 01267-SC, 2015 U.S. Dist. LEXIS 89365, at *13 (N.D. Cal. July 9, 2015).

12 A Section 2019.210 identification describes trade secrets with reasonable particularity
 13 where it sets forth broad categories of information claimed as trade secrets, so long as the
 14 descriptions of the categories are sufficient to enable the defendant to identify and understand
 15 what the plaintiff claims is protected. *Whyte v. Schlage Lock Co.*, 101 Cal. App. 4th 1443, 1452-
 16 53 (2002). Thus, an identification of categories of information by a manufacturer including
 17 “composite material process technologies,” “finishing processes for...products,” “costs of
 18 production,” “market research data,” and “strategy plans” were all determined to be reasonably
 19

20 *Solutions.Com* cases (*see, e.g.*, Mot. at 6:1-8) involved the interpretation or application of
 21 Section 2019.210. The two cases involved motions for summary judgment and for preliminary
 22 injunction, respectively. *See Imax*, 152 F.3d at 1163-64; *Agency Solutions.Com*, 819 F. Supp.
 23 2d at 1005-06. In those two cases, the plaintiffs had the burden of proving their trade secrets
 24 existed (*see Imax*, 152 F.3d at 1164 and 1166; *Agency Solutions.Com*, 819 F. Supp. 2d at 1015),
 25 not simply describing the boundaries within which they lie as is required for discovery to
 commence under Section 2019.210. Indeed, in each of those cases, discovery into the trade
 secrets involved had already commenced. *See Imax*, 152 F.3d at 1165; *Agency Solutions.Com*,
 819 F. Supp. 2d at 1013.

26 ⁴ Alta notes its manufacturing process can be a trade secret even if portions of it are generally
 27 known, or even if every individual portion of it is generally known, so long as the combination
 28 of all such information is not generally known. *See Spring Design, Inc. v. Barnesandnoble.com,*
LLC, No. C 09-05185 JW, 2010 U.S. Dist. LEXIS 136569, at *10-11 (N.D. Cal. Dec. 27, 2010).

particular descriptions of the boundaries within which the trade secrets lie. *See ibid.* *See also* *ActiveRain Corp. v. Move, Inc.*, No. CV 07-5037-DDP(CTx), 2008 U.S. Dist. LEXIS 126752, at *2-3 (C.D. Cal. May 8, 2008) (finding similar categories sufficiently specific). Moreover, where the trade secrets were voluntarily disclosed by plaintiff to defendant during acquisition negotiations and the plaintiff is able to produce documents containing the trade secrets, the parties should be able to understand the categories of trade secrets. *ActiveRain Corp. v. Move, Inc.*, No. CV 07-5037-DDP(CTx), 2008 U.S. Dist. LEXIS 127718, at *1-2 and *6-7 and n.3 (C.D. Cal. Apr. 29, 2008).

“Reasonable particularity” does not require a party to define its trade secrets in detail, nor does Section 2019.210 require a mini-trial on misappropriation before plaintiff is allowed discovery. *Advanced Modular*, 132 Cal. App. 4th at 835–36; *Prolifiq*, 2014 U.S. Dist. LEXIS 77493, at *6. No more particularity is demanded by the statute than that necessary to permit the defendant to “discern the boundaries of the trade secret so as to prepare available defenses, or to permit the court to understand the identification so as to craft discovery.” *Gatan*, 2017 U.S. Dist. LEXIS 49751, at *14. “The nature of the identification required in any particular case need only be reasonable under the circumstances. It cannot be divorced from the statutory goals which it is intended to serve.” *Brescia*, 172 Cal. App. 4th at 152.

Section 2019.210 “does not create a procedural device to litigate the ultimate merits of the case – that is, to determine as a matter of law on the basis of evidence presented whether the trade secret actually exists.” *Brescia*, 172 Cal. App. 4th at 149. *See also Prolifiq*, 2014 U.S. Dist. LEXIS 77493, at *8. “[Plaintiff] is *not* required to convince defendants or the court in its section 2019.210 statement that its alleged trade secrets are not generally known to the public.” *Perlan Therapeutics, Inc. v. Superior Court*, 178 Cal. App. 4th 1333, 1351 (2009) (requiring proof of element of claim at pre-discovery stage would constitute legal error). For the same reason, the plaintiff is not required to explain *why* the alleged trade secret differs from matters generally known unless its identification is otherwise inadequate in describing the boundaries within which

1 the trade secret lies. *Brescia*, 172 Cal. App. 4th at 143; *Gatan, Inc. v. Nion Co.*, No. 15-cv-01862-
2 PJH, 2017 U.S. Dist. LEXIS 49751, at *14 (N.D. Cal. Mar. 31, 2017).

3 Where credible experts disagree as to whether they can understand and distinguish the
4 trade secrets identified by the plaintiff, the identification should be considered adequate so as to
5 allow discovery to commence. *See Advanced Modular*, 132 Cal. App. 4th at 836-37 and 831
6 (plaintiff's expert asserted defense expert was being "obtuse" in claiming confusion over the
7 trade secrets claimed). *See also Brescia*, 172 Cal. App. 4th at 148 and *Phoenix Techs.*, 2010 U.S.
8 Dist. LEXIS 24884, at *12-13 (applying *Advanced Modular* rule that discovery goes forward
9 where claimant's expert is credible).

10 Indeed, if the defendant is able to craft detailed arguments for why the trade secrets
11 claimed in the plaintiff's Section 2019.210 identification are generally known or do not
12 constitute trade secrets, that demonstrates that the plaintiff has adequately described them so that
13 the defendant is able to investigate and prepare a defense against the plaintiff's trade secrets
14 claims. *See Prolifiq*, 2014 U.S. Dist. LEXIS 77493, at *8. *See also Advanced Modular*, 132 Cal.
15 App. 4th at 834 (explaining that one of the purposes of Section 2019.210's disclosure
16 requirement is to "enable [] defendants to form complete and well-reasoned defenses"). Thus,
17 where the defendant is able to investigate by searching prior art as to whether the alleged trade
18 secrets were generally known and, therefore, already in the public domain, the defendant
19 demonstrates that it understands the boundaries of the alleged trade secrets and is "quite capable
20 of investigating possible defenses." *Brescia*, 172 Cal. App. 4th at 151-52. *See also Prolifiq*, U.S.
21 Dist. LEXIS 77493, at *8 (detailed arguments as to why plaintiff's information does not
22 constitute a trade secret means that plaintiff has adequately identified the information).

23 Trial courts have broad discretion in determining whether a plaintiff's identification
24 satisfies Section 2019.210. *Perlan Therapeutics, Inc. v. Superior Ct.*, 178 Cal. App. 4th 1333,
25 1337 (2009); *Prolifiq*, 2014 U.S. Dist. LEXIS 77493, at *7. In considering the adequacy of a
26 trade secret identification, "the designation should be liberally construed, and reasonable doubts
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about its sufficiency resolved in favor of allowing discovery to go forward.” *Brescia*, 172 Cal. App. 4th at 149; *Prolifiq*, 2014 U.S. Dist. LEXIS 77493, at *7.

A. Alta Claims Only Non-Public Information About Alta’s Technology Provided to LGE and Has Not Used Improper “Catch-All” Descriptions as LGE Contends.

LGE contends that Alta claims all non-public information about Alta’s technology and has used improper “catch-all” descriptions. LGE misrepresents Alta’s Identification, which claims only non-public information about Alta’s technology provided to LGE. Trade secrets (1) and (9) are, respectively: (1) the research and development information provided by Alta to LGE about its manufacturing process and manufacturing experience;⁵ and (9) technologies relating to GaAs-based solar cells and modules that Alta provided to LGE.⁶ (*See* Motion (“Mot.”) at 6:4-7:11.) Neither of these trade secrets descriptions is an impermissible “catch-all” description. Both of these trade secret identifications are limited to the information provided by Alta to LGE and are therefore easily understandable to LGE.

First, Alta claims as trade secrets information which was revealed by Alta to LGE *at LGE’s request* during their negotiations. Thus, LGE is able to understand Alta’s Identification to refer to the information Alta voluntarily disclosed. *See ActiveRain*, 2008 U.S. Dist. LEXIS 127718, at *1-2 and *6-7 and n.3 (where trade secrets were disclosed during negotiations, the parties should be able to understand the categories of trade secrets disclosed). As the Court stated in its Order on LGE’s Motion to Dismiss:

⁵ LGE falsely asserts that Alta is claiming “*all* non-public information about Alta’s technology, regardless of whether it was even disclosed to LGE.” (*See* Mot. at 6:25-26.) As Alta’s Identification makes clear, however, Alta is claiming only the non-public information that LGE learned from Alta. (*See* Identification at 2:9-11 and 3:1-6.)

⁶ Due to a typographical error, Alta accidentally included two trade secrets numbered (9) in its Identification. Alta subsequently amended its Identification to renumber this trade secret as (9a). (*See* O’Connor Decl., ¶3.) Trade secret (8) and both trade secrets numbered (9) in Alta’s Identification are three broad technologies about which Alta provided trade secrets to LGE. (*See* Identification at 4:21-28.)

[T]he Court agrees with Alta that because Alta's claims are based on the Confidential Information exchanged pursuant to the 2011 NDA, "LGE can hardly claim it is unable to determine what trade secrets Alta gave LGE in 2011 and 2012." (D.N.55 at 14:26-15:2)

Second, the documents returned by LGE to Alta make it clear that LGE understands what is meant by trade secrets (1) and (9). For example, LGE's documents: (a) refer to "Alta technology" that LGE learned from Alta; (b) contain extensive notes concerning the technology; and (c) refer to LGE's plan to "develop in-house" Alta technology." (Declaration of James Mikkelson ("Mikkelson Decl."), ¶¶ 18, 36, 48, 55, 62, 77, 84, 85, 89.) The entirety of the R&D information Alta disclosed to LGE under the NDA constitutes a valuable trade secret that LGE itself referred to as the "Alta technology." (*See id.*, ¶ 77-81.) Similarly, LGE's documents refer to [REDACTED] as one of Alta's three "core technologies." (*See id.*, ¶ 77-79.) As is apparent from LGE's own documents, LGE actually understands Alta's descriptions.

Third, Alta did not stop with its identification of trade secrets (1) and (9), but went on to further describe with greater particularity the trade secrets included within (1) and (9). Alta's extensive Identification, using both the descriptors employed by LGE to refer to Alta's technology, as well as breaking them down in greater detail by their components, distinguishes Alta's Identification from those in the cases LGE cites. (*See Mot.* at 6:6-19.) *See, e.g., Loop AI Labs*, 195 F. Supp. 3d 1107, 1113-14 (N.D. Cal. 2016) (plaintiff only vaguely referred to pleadings, declarations, and other papers filed without seal in the public record). When considered as a whole and in its entirety, Alta's Identification provides sufficient information to place LGE on notice as to the trade secrets claimed by Alta and to allow the Court to craft limits on discovery.

B. LGE Has Used the Same Categories to Describe Alta's Technology that Are Used by Alta in Its Identification.

LGE argues that Alta has improperly used categories in identifying Alta's trade secrets. (*See Mot.* at 7:12-10:13.) LGE's argument and Alta's response are similar to the preceding section A, above. Alta has described its trade secrets using categories, information, and descriptions contained in LGE's own documents discussing Alta's trade secrets. Alta's trade

1 secrets were revealed by Alta pursuant to NDA and at LGE's request. Thus, LGE is able to
2 understand Alta's Identification. *See ActiveRain*, 2008 U.S. Dist. LEXIS 127718, at *1-2 and *6-
3 7 and n.3. As the Court stated in its Order on LGE's Motion to Dismiss: "LGE can
4 ascertain...the boundaries within which the secret lies." (D.N. 55 at 13:22-14:1 (internal
5 quotation and citation omitted).

6 The use of categories to identify trade secrets in a Section 2019.210 Identification is
7 appropriate if the defendant can understand what is meant. *See Whyte*, 101 Cal. App. 4th at 1452-
8 53 (defendant showed an understanding of the meaning of the categories used by plaintiff to
9 identify its trade secrets); *ActiveRain Corp.*, 2008 U.S. Dist. LEXIS 126752, at *3 (finding
10 similar categories to be "fairly specific"). Here, in describing trade secret (7) Alta has used
11 categories of trade secrets as they are described in the NDA signed by both LGE and Alta that
12 identified the categories of trade secrets information that the parties contemplated Alta would
13 provide to LGE. (*See* D.N. 55 at 14:8-15:2.)

14 Similarly, Alta's descriptions of trade secrets (8) and (9), [REDACTED] and
15 [REDACTED], are nearly identical to the descriptions
16 used by LGE to refer to Alta's trade secret technologies. (*See* Mikkelsen Decl., ¶¶ 77-85.)
17 LGE's technical questions to Alta were divided into four categories, A, B, C, and D. (*See id.*)
18 Trade secrets (8) and (9) correspond to LGE categories A and B. (*See id.*, ¶83.) LGE cannot
19 claim it does not understand what these descriptions mean when they correspond to the
20 categories employed by LGE in referring to Alta's technology. This Court previously determined
21 that Alta's allegations about the categories of trade secrets Alta disclosed to LGE "give both the
22 Court and LGE notice of the boundaries within which the trade secrets lie." (*See* D.N. 55 at
23 13:21-16:5.) LGE's current Motion ignores that finding.

24 Moreover, Alta did not simply stop there, but built on its identifications of both (8) and
25 (9) with nearly *five additional pages* of information describing the specific trade secret
26 information involved. (*See* Identification at pp. 5-9.) Alta's further explication on each of these
27 broader trade secrets is what distinguishes the facts of this case from the *SocialApps* case cited
28

1 by LGE where the plaintiff described its trade secrets “*only* categorically.” *SocialApps*, 2012
2 WL 2203063, at *3 (emphasis added).

3 LGE falsely contends that Alta’s information – compiled over years of research – as to
4 measures of efficiency, uniformity, and similar matters (trade secrets (42)-(49)) cannot constitute
5 trade secrets. (*See* Mot. at 9:11-10:9.) Alta’s compiled data and other information resulting from
6 years of testing, analysis, and experimentation as well as Alta’s superior and unique base of
7 knowledge would be valuable to LGE as a competitor. (*See* Mikkelson Decl., ¶¶ 302-303.) LGE
8 asked Alta about these matters because LGE did not know the answers. Alta provided
9 substantive answers to each of the questions and answers cited in Alta’s Identification. This
10 information therefore constitutes trade secrets which Alta has adequately described in its
11 Identification. *See I-Flow Corp. v. Apex Med. Techs., Inc.*, No. 07cv1200-DMS(NLS), 2008 U.S.
12 Dist. LEXIS 44551, at *13-14 (S.D. Cal. May 23, 2008). LGE takes issue with whether these
13 qualify as trade secrets, an issue not to be resolved in a Section 2019.210 identification
14 proceeding. *See Perlan*, 178 Cal. App. 4th at 1351.

15 LGE is able to understand these categories of data and information provided by Alta to
16 LGE. *See Whyte*, 101 Cal. App. 4th at 1452-53; *ActiveRain*, 2008 U.S. Dist. LEXIS 127718, at
17 *1-2 and *6-7 and n.3. The *SocialApps* case relied upon by LGE also states that a trade secret
18 can be sufficiently identified by a plaintiff “pointing to where it might be found in the
19 information it turned over to [the defendant] in the course of ‘due diligence.’” *SocialApps*, 2012
20 WL 2203063, at *4. That is precisely what Alta did in identifying trade secrets (42)-(49).

21 Alta’s use of categories, information, and descriptions contained in LGE’s own
22 documents discussing Alta’s trade secrets revealed to LGE during due diligence is reasonably
23 particular.

24 **C. Alta Need Not Identify Its Trade Secrets with Any Greater Particularity than**
25 **Is Required to Permit LGE to Defend Itself and for the Court to Craft**
26 **Discovery.**

27 LGE incorrectly argues that *Advanced Modular* “requires” Alta to satisfy a “heightened
28 particularity” standard because this case involves “highly complex” technology. (*See* Mot. at

10:16-11:13.) LGE’s argument is based upon a misinterpretation *Advanced Modular*. As explained in *Brescia*, *Advanced Modular* does not impose any greater need for particularity unless it is required to serve the purposes of the statute to enable the defendant to develop defenses and help the court shape discovery. *Brescia*, 172 Cal. App.4th at 149-50. Unless greater particularity is required to serve one of those twin goals, no further elaboration is required regardless of the complexity of the technology. *Id.* at 150 and 152. *See also Gatan*, 2017 U.S. Dist. LEXIS 49751, at *14.

The Court previously expressed incredulity at LGE’s claim that it is unable to understand what trade secrets Alta disclosed to LGE during LGE’s due diligence (*see* D.N.55 at 14:26-15:2) and found some of Alta’s descriptions of its trade secrets to “give both the Court and LGE notice of the boundaries within which [Alta’s] trade secrets lie.” (*See* D.N.55 at 13:21-15:2 and 16:2-5.) Nevertheless, Alta’s Identification provides even greater details of Alta’s trade secrets.

Lebby’s opinions are based upon his incorrect understanding that Alta is required to state each trade secret “with a more exacting level of particularity to distinguish the claimed trade secret from matters already known to persons skilled in the field.” (*See* Lebby Decl., ¶ 13.) Lebby then proceeds to explain why he believes Alta’s trade secrets cannot be distinguished from matters already known and presumably have no value. Lebby is wrong, and his opinions are based upon an incorrect understanding of the purposes and legal requirements for a Section 2019.210 identification. *See Brescia*, 172 Cal. App.4th at 149-52; *Gatan*, 2017 U.S. Dist. LEXIS 49751, at *14.

Alta is not required on this Motion to distinguish its trade secrets from matters already known. Nevertheless, Alta has done so. The declaration of Alta’s expert, James Mikkelson, filed and served herewith demonstrates that Alta’s technology revealed to LGE was not publicly known and had value to a competitor of Alta. (*See* Mikkelson Decl., ¶¶ 41, 116, 119, 122, 302-305.)

Furthermore, the rule of *Advanced Modular* is that when credible experts disagree as to whether they can understand and distinguish the trade secrets identified by the plaintiff, the

identification should be considered adequate so as to let discovery commence. *See Advanced Modular*, 132 Cal. App. 4th at 836-37 and 831. *See also Brescia*, 172 Cal. App.4th at 148; *Phoenix Techs.*, 2010 U.S. Dist. LEXIS 24884, at *12-13.

LGE was able to satisfy itself through its questions and Alta's answers during due diligence that LGE sufficiently understood Alta's manufacturing process. (*See Mikkelson Decl.*, ¶¶ 54, 172, 177, 219.) LGE is able to understand the process described in Alta's Identification sufficiently to prepare a defense. *See ActiveRain*, 2008 U.S. Dist. LEXIS 127718, at *1-2 and *6-7 and n.3.

1. Alta's Technology Descriptions Sufficiently Identify Alta's Trade Secrets.

Alta's technology is a manufacturing process at its core as LGE acknowledges. (*See Mot. at 11:16-23.*) LGE admits that under *Diodes*, for Alta's manufacturing process, Alta is only required to "identify the end product manufactured [and] supply sufficient data concerning the process, *without revealing the details of it...*" (*See Mot. at 12:27-12:4.*) *See also Pixion, Inc.*, 421 F. Supp.2d 1241-42. The trade secrets themselves need not be set forth, only information sufficient to permit the defendant to ascertain at least the boundaries within which the secret lies. *Prolifiq*, 2014 U.S. Dist. LEXIS 77493, at *6. Alta has provided sufficient information regarding its manufacturing process for LGE to defend itself and for the Court to craft discovery. No further details are required at this stage in order for discovery to proceed.

Alta further responds below to each of the subsections of LGE's Motion concerning Alta's manufacturing process using the corresponding headings employed by LGE for purposes of clarity.

a. "Manufacturing Process"

Alta has provided sufficient information about its manufacturing process. Alta is not required at this early stage to provide more exacting technical details of its techniques, processes, and methods as LGE contends. (*See Mot. at 13:3-7.*) Alta need only reveal sufficient information to permit LGE to prepare a defense and the Court to craft discovery. *See Pixion*,

1 *Inc.*, 421 F. Supp. 2d 1241-42. The *Imax* case cited by LGE (*see* Mot. at 13:3-7) is
 2 distinguishable because it involved a motion for summary judgment, not a Section 2019.210
 3 identification.

4 Alta's Identification provides sufficient information concerning Alta's manufacturing
 5 process to permit LGE to ascertain the boundaries within which Alta's trade secrets lie. Alta's
 6 Identification describes details sufficient to inform any manufacturer in the field as to the trade
 7 secrets being claimed by Alta. (*See* Mikkelson Decl., ¶¶ 54, 172, 177, 219.)

8 LGE claims that Alta only discloses data which are the results of its methods without
 9 disclosing how the results were achieved for trade secrets (10), (10a), (10b), (10c), (15), (26),
 10 (32), and (39). (*See* Mot. at 13:7-9.) These trade secrets include data concerning Alta's growth
 11 rates, uniformity achieved, efficiency achievements and targets, and cost information.
 12 Information that is the result of research can be a trade secret if it would be valuable to a
 13 competitor. *Whyte*, 101 Cal. App. 4th at 1455. Alta's data would be valuable to a competitor as a
 14 proof of concept demonstrating that commercial manufacture is possible. (*See* Mikkelson Decl.,
 15 ¶¶ 41, 54, 116, 119, 122, 172, 219, 302-305.) Alta's trade secret (3) (feasibility research and
 16 development) and trade secret (4) (road map) would be valuable for the same reasons.

17 Alta's trade secret (52) (process flow) is a classic trade secret. *See* Cal. Civ. Code §
 18 3426.1(d) ("trade secret" includes a "process"). LGE's lengthy argument and citation to
 19 publications in which Alta's process is purportedly disclosed (*see* Mot. at 13:19-14:3)
 20 demonstrates that LGE understands this trade secret and is able to prepare a defense. *See*
 21 *Prolifiq*, 2014 U.S. Dist. LEXIS 77493, at *8.

22 **b. "Use of Relative Terms"**

23 Alta's Identification describes sufficient information about its manufacturing process
 24 using Alta's "[REDACTED]." (*See* Identification at 5:7.) LGE attacks
 25 Alta's description of several aspects of this process as "imprecise" because they use "relative
 26 terms." (*See* Mot. at 14:10-15:10 discussing trade secrets (16), (22), and (25).) Alta need not
 27 reveal the technical details of its manufacturing process or the secrets themselves. *See Pixion*,
 28

1 *Inc.*, 421 F. Supp. 2d 1241-42. Alta reveals enough information to provide LGE and the Court
 2 the boundaries within which Alta's secrets lie. *See Prolifiq*, 2014 U.S. Dist. LEXIS 77493, at *6.
 3 The *Imax* case cited by LGE (*see* Mot. at 15:5-7) is distinguishable because it involved a motion
 4 for summary judgment, not a Section 2019.210 identification.

5 Alta's successful [REDACTED]
 6 [REDACTED] (itemized as trade secrets (36), (36a), and (36(b))
 7 constitute research data that would be valuable to a competitor. (*See* Mikkelson Decl., ¶¶ 53, 58,
 8 83.) *See Whyte*, 101 Cal. App. 4th at 1455.

9 **c. "Undisclosed Relationship"**

10 Alta's disclosure to LGE that [REDACTED]
 11 [REDACTED] (trade secret (21)) – what works and
 12 what does not work – was trade secret "know how" that would be valuable to LGE as a
 13 competitor. (*See* Mikkelson Decl., ¶ 110, 119, 223.) *See Waymo LLC v. Uber Techs., Inc.*, No. C
 14 17-00939 WHA, 2018 U.S. Dist. LEXIS 8263, at *10-11 (N.D. Cal. Jan. 18, 2018) (defendant
 15 might use negative know-how trade secret by taking its lesson to avoid fruitless development
 16 efforts). No further precision is required for this trade secret to be understood as LGE contends.
 17 (*See* Mot. at 15:11-19.)

18 **d. "Undisclosed Compositions"**

19 Alta's Identification states that [REDACTED]
 20 [REDACTED] (53) and (54). This provides sufficient information to
 21 serve the purposes of Section 2019.210 without revealing the trade secrets themselves. *See*
 22 *Pixion, Inc.*, 421 F. Supp. 2d 1241-42. No more information is required as LGE contends. (*See*
 23 Mot. 15:20-16:1.)

24 **e. "Apparatus Design"**

25 LGE argues that Alta's MOCVD apparatus design cannot constitute a trade secret. (*See*
 26 Mot. at 16:7-21.) LGE misleadingly cites *SocialApps* for the proposition that the design of a
 27 device can never be a trade secret. *SocialApps* does not support the proposition for which LGE
 28

1 cites it. *SocialApps* and *Silvaco*, the case upon which *SocialApps* relied, involved software
 2 programs available to the public. As stated in *Silvaco*, the underlying design of a software
 3 program cannot be a trade secret because it is “evident to anyone running the finished program
 4 [and] ceases to be a protectable trade secret for that reason.” *Silvaco*, 184 Cal. App. at 221-22.

5 In contrast, this case involves an Alta-designed trade secret apparatus or device, kept in a
 6 secure location on Alta’s premises, of which LGE was shown sketches and only permitted to
 7 examine when LGE visited Alta in October 2011. (See Identification at 6:13-15.) A “device” is
 8 included within the statutory definition of a trade secret so long as it is not generally known to
 9 others. See Cal. Civ. Code § 3426.1. Alta is not required to provide sketches or all of the
 10 technical details of the secrets themselves in its Identification. See *Pixion, Inc.*, 421 F. Supp. 2d
 11 1241-42. LGE argues that it cannot distinguish trade secrets aspects of Alta’s MOCVD design
 12 and operation from those purportedly disclosed in various publications. (See Mot. 16:22-17:14.)
 13 LGE’s argument and citation to publications in which Alta’s process is purportedly disclosed
 14 demonstrates that LGE understands this trade secret and is able to prepare a defense. See
 15 *Prolifiq*, 2014 U.S. Dist. LEXIS 77493, at *8.

16 f. “ [REDACTED] ”

17 LGE contends that it cannot distinguish Alta’s [REDACTED]
 18 [REDACTED] from “matters generally known” in the field. (See Mot. at 18:15-22:9.) Alta is not
 19 required to explain why its trade secrets differ from matters already known in the industry unless
 20 its Identification is otherwise inadequate to permit LGE to understand the boundaries within
 21 which its trade secrets lie. See *Brescia*, 172 Cal. App. 4th at 143; *Gatan*, 2017 U.S. Dist. LEXIS
 22 49751, at *14. LGE’s ability to make detailed arguments as to why Alta’s claimed trade secrets
 23 are already known and therefore not trade secrets demonstrates that Alta has adequately
 24 described them so that LGE can investigate the merits of Alta’s trade secret claims. See *Prolifiq*,
 25 2014 U.S. Dist. LEXIS 77493, at *8-9; *Brescia*, 172 Cal. App. 4th at 151-52. Section 2019.210
 26 “does not create a procedural device to...determine...whether the trade secret actually exists.”
 27
 28

Brescia, 172 Cal. App. 4th at 149. *See also Prolifiq*, 2014 U.S. Dist. LEXIS 77493, at *7-8; *Perlan*, 178 Cal. App. 4th at 1351.

2. Alta's Unique Business Information Constitutes Trade Secrets.

All of Alta's own research and development, road map, and costs would be unique to Alta and would be valuable information for a competitor to have in order to meet or undercut Alta's position as the forerunner in a burgeoning market. (See Mikkelson Decl., ¶¶ 41, 116, 119.) See also Whyte, 101 Cal. App. 4th at 1455-56 (plaintiff's costs, strategic plans, and other business information are trade secrets unique to plaintiff). Alta is therefore not required to distinguish its trade secret costs and other business information from what is "generally known in the field" as LGE contends. (*See Mot. at 22:12-23:15.*)

D. Alta's Identification Is Not Required to be in the Form of a List as LGE Demands.

Alta has identified its trade secrets in a manner that is reasonable under the circumstances of this case. *See Bladeroom Grp. Ltd. v. Facebook, Inc.*, No. 5:15-cv-01370-EJD, 2018 U.S. Dist. LEXIS 10905, at *7-8 (N.D. Cal. Jan. 2, 2018). The form of the identification required under Section 2019.210 is not statutorily defined, but rather is vague in order to permit "play in the joints." *Id.* at 7. Alta's Identification describes a manufacturing process which requires some "flow" for the reader to follow the interrelated steps of the process. LGE's demand for an identification in the form of a "list" (*see Mot. at 23:17-24:15*) is not required by the statute or the *Advanced Modular* case cited by LGE.

E. Alta's Reference to Portions of LGE's Own Documents and Answers Provided by Alta to LGE's Questions Provides Reasonable Particularity.

Alta refers to portions of LGE's own documents as well as questions asked by LGE, along with the corresponding answers provided by Alta (Q&A), to describe the trade secrets Alta alleges LGE misappropriated. (*See Identification at 3:5-13.*) These documents demonstrate that Alta's trade secrets were considered important enough to LGE to ask about them or discuss them. Alta's references to specific portions of LGE's documents and the Q&A are appropriate

means of identifying these trade secrets. *See Myrio Corp. v. Minerva Network, Inc.*, Case No.: C 00-20996 RMW (PVT), 2001 U.S. Dist. LEXIS 10461, at *3 (N.D. Cal. Apr. 4, 2001) (allowing plaintiff to reference documents setting forth trade secrets by specifying the portions of the document describing them). Referencing specific portions of documents in this manner to identify trade secrets was approved of by the court in the *Loop AI* case cited by LGE. *See Loop AI*, 195 F. Supp. 3d at 1116 (citing *Myrio*).

V. CONCLUSION

For all of the foregoing reasons, LGE's Motion to Compel Further Identification of Alta's Trade Secrets should be denied.

DATED: November 8, 2018

/s/ John D. O'Connor

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